

A. G. Contract No. KR95 2796TRN  
ADOT ECS File: JPA 95-221  
Project: STP-WBG-0(1)P  
Fund: SS363 01C  
Section: Wickenburg Way Bike Lanes

INTERGOVERNMENTAL AGREEMENT  
BETWEEN  
THE STATE OF ARIZONA  
AND  
THE TOWN OF WICKENBURG

THIS AGREEMENT is entered into 23 February 1996,  
pursuant to Arizona Revised Statutes, Sections 11-951 through 11-  
954, as amended, between the STATE OF ARIZONA, acting by and  
through its DEPARTMENT OF TRANSPORTATION (the "State") and the  
TOWN OF WICKENBURG, acting by and through its TOWN COUNCIL (the "  
Town").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes  
Section 28-108 and 28-112 to enter into this agreement and has by  
resolution, a copy of which is attached hereto and made a part  
hereof, resolved to enter into this agreement and has delegated  
to the undersigned the authority to execute this agreement on  
behalf of the State.

2. The Town is empowered by Arizona Revised Statutes  
Section 48-572 to enter into this agreement and has by  
resolution, a copy of which is attached hereto and made a part  
hereof, resolved to enter into this agreement and has authorized  
the undersigned to execute this agreement on behalf of the Town.

3. Congress has authorized appropriations for, but not  
limited to, the design and construction of streets and primary,  
feeder and farm-to-market roads; the replacement of bridges; the  
elimination of roadside obstacles; and the application of  
pavement markings.

4. Such project within the boundary of the Town has been  
selected by the Town; the field survey of the project has been  
completed; and the plans, estimates and specifications have been  
prepared and, as required, submitted to the Federal Highway  
Administration ("FHWA") for approval.

NO. <u>20523</u>
FILED WITH SECRETARY OF STATE
Date Filed <u>02/23/96</u>
<u>Gene Lee Hull</u> Secretary of State
By <u>Vicky Gruenewald</u>

5. The only interest of the State in the project is in the acquisition of federal funds for the use and benefit of the Town by reason of federal law and regulations under which funds for the project are authorized to be expended.

6. The work embraced by this agreement and the estimated cost are as follows: Construct Bicycle Lanes.

Estimated Project Cost (includes 15% CE)	\$ 227,635.00
Federal Aid Funds @ MAG CAP	\$ 190,000.00
Town Funds	\$ 37,635.00
Five Percent Surcharge	\$ 9,897.00
Total Town Funds	\$ 47,532.00

This includes a five percent surcharge per Local Government Engineer Memo of April 4, 1994.

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

## II. SCOPE OF WORK

1. The State shall submit a program containing the aforementioned project to FHWA with the recommendation that it be approved for construction.

a. If such project is approved for construction by FHWA and the funds are available for construction of the project, the State, as authorized agent for the Town, with the aid and consent of FHWA will proceed to advertise for, receive and open bids, and subject to the concurrence of FHWA and the Town, award the contract, enter into a contract with a firm to whom the award is made for the construction of the project, such project to be performed, completed, accepted and paid for in accordance with the requirements of the Standard Specifications for Road and Bridge Construction of the Highways Division, Arizona Department of Transportation. Further, the State will enter into a Project Agreement with FHWA covering the work embraced in said contract or in this agreement and will request the maximum federal funds available.

b. Should some unforeseen conditions or circumstances increase the cost of said work required by a change in the extent or scope of the work called for in this agreement, the State shall not be obligated to incur any expenditure in excess of the amount of Town's deposit unless and until so authorized in writing by the Town.

2. Prior to the solicitation of bids, the Town shall deposit with State funds in the amount determined by the State to be necessary to match federal funds in the ratio required.

Upon completion of the construction contract, the State shall return to the Town any part of the funds deposited by Town remaining after Town's pro rata share of the cost, as finally fixed and determined by FHWA, has been paid.

3. The Town shall acquire, without cost to the State, the necessary right-of-way and hereby certifies that all necessary rights-of-way have been acquired.

4. The Town shall remove from the proposed right-of-way all obstructions or unauthorized encroachments of whatever nature, either above or below the surface, and hereby certifies that all obstructions and encroachments have been removed therefrom.

5. The Town shall not permit or allow any encroachments, except those authorized by permit, upon, or private use of, the right of way. In the event of any unauthorized encroachment or improper use, the Town shall take all necessary steps to remove or prevent any such encroachment or use; failing in which the State shall have the right to proceed with the removal or prevention thereof, the cost of such removal or prevention to be borne by the Town.

6. Upon completion of construction, the Town shall provide maintenance unless assumed by another governmental entity.

### III. MISCELLANEOUS PROVISIONS

1. The State assumes no financial obligation or liability under this agreement. The Town assumes full responsibility for the design, plans and specifications, reports, the engineering in connection therewith, and the construction of the improvements contemplated, cost over-runs and construction claims. It is understood and agreed that any damages arising from carrying out, in any respect, the terms of this agreement or any modification thereof, shall be solely the liability of the Town and that the Town hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all

cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity; condition, or event arising out of the performance or nonperformance of any provisions of this agreement by the State, any of its departments, agencies, officers and employees, the Town, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, expenses of litigation or attorneys' fees.

2. This agreement shall remain in force and effect until completion of the work and related deposits or reimbursements.

3. This agreement shall become effective upon filing with the Secretary of State.

4. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

5. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

6. In the event of any controversy which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

7. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation  
Joint Project Administration  
205 South 17 Avenue, Mail Drop 616E  
Phoenix, AZ 85007

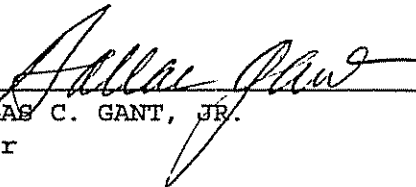
Town of Wickenburg  
Town Manager  
Box 1269  
Wickenburg, AZ 85358-1269

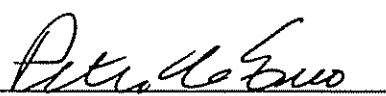
8. Attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.


TOWN OF WICKENBURG

STATE OF ARIZONA  
Department of Transportation

By   
DALLAS C. GANT, JR.  
Mayor

By   
PETER L. ENO  
Contract Administrator

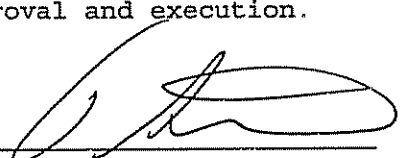
ATTEST

By   
EDNA GRIEVES  
Town Clerk

RESOLUTION

BE IT RESOLVED on this 14th day of December 1995, that I, the undersigned LARRY S. BONINE, as Director of the Arizona Department of Transportation, have determined that it is in the best interests of the State of Arizona that the Department of Transportation, acting by and through the Highways Division, to enter into an agreement with the the Town of Wickenburg for the purpose of defining responsibilities for the design, construction and maintenance of bicycle lanes on Wickenburg Way (Local Government).

Therefore, authorization is hereby granted to draft said agreement which, upon completion, shall be submitted to the Contract Administrator for approval and execution.

  
\_\_\_\_\_  
for LARRY S. BONINE  
Director

8. Discussion/Action On Awarding Proposal For Engineering/Inspection Services For The Reconstruction Of Sidewalks On Portions Of Jefferson Street

Town Manager Siegel reported that staff sent out letters requesting proposals from engineering firms to provide bidding, design and inspection services for the reconstruction of sidewalks along portions of Jefferson Street. Mr. Siegel stated he is recommending the contract be awarded to the lowest responsible bidder, Mohave Engineering. Councilmember Walters asked if part of the contract includes saving some of the trees that line Jefferson Street. Mr. Siegel replied that originally, they had planned to remove all the trees, but have decided to remove the dead ones and start a root maintenance program for the remaining trees.

**MOTION»** Moved that the proposal for engineering/inspection services for the reconstruction of sidewalks on portions of Jefferson Street be awarded to the lowest responsible bidder, Mohave Engineering, in the amount of \$7,900.

**BY»** Vice Mayor Beard

**SECOND»** Councilmember Walters

**VOTE»** 5-0-2

9. Discussion/Action On Parking Problems On Palm Drive

Town Manager Siegel reported that the Police Department has reviewed the situation and due to the very narrow construction of Palm Drive, staff concurs that no parking should be allowed of either side of Palm Drive in its entirety. If approved, "No Parking Signs" will be posted on both sides of the street, the curbing will not be painted red. As there was no discussion,

**MOTION»** Moved that parking along both sides of Palm Drive be prohibited and staff be directed to post the street as "no parking"

**BY»** Councilmember Roberts

**SECOND»** Councilmember Brown

**VOTE»** 5-0-2

10. Presentation of Comprehensive Annual Financial Report (1994/95)

Finance Director Candelaria distributed the 1994/95 annual financial report completed by the auditing firm of John C. Todd. Mr. Candelaria reported that the audit was clean.

**MOTION»** Moved that the 1994/95 annual Financial Report be received and filed

**BY»** Councilmember Walters

**SECOND»** Councilmember Brown

**VOTE»** 5-0-2

11. Discussion/Action On Approval Of Intergovernmental Agreement Between Arizona Department Of Transportation And The Town Of Wickenburg And The Budget Adjustments Required To Construct Bicycle Lane Project

Town Planner Stricklin reported that on February 22, 1996, ADOT will go out to bid on this project if it is approved this evening and the Town pays them the amount of \$47,532. Mr. Stricklin continued that \$37,635 is the actual amount due, plus they add a five percent surcharge (\$9,897) for any change orders or complications. Mr. Stricklin added that the Town may receive all of the surcharge monies back if the project goes smoothly. Councilmember Roberts commented that from the start of this project, he has always considered the speed excessive on U.S. 60

which makes him very concerned for the safety of children utilizing the bike path and is against it.

**MOTION»** Moved that the Intergovernmental Agreement with Arizona Department of Transportation for the Bicycle Lane Project be approved; that \$47,532 be appropriated from the Capital Improvement Program Fund and staff be directed to proceed

**BY»** Councilmember Walters

**SECOND»** Vice Mayor Beard

**VOTE»** 3-2-2 (Brown & Roberts-No) MOTION CARRIED

12. Discussion/Action On Seeking Outside Legal Advice On Matters Pertaining To Elections

Town Manager Siegel reported that due to past and present accusations from some of our citizens, the Town Attorney is allowing the Council an opportunity to utilize outside counsel for election-related advice to both Council and the Town Clerk during the upcoming primary and general elections. Mr. Siegel added that the Town wishes to retain Martinez & Curtis as they are familiar with Town issues.

Vice Mayor Beard stated she did not see why the Town needs to pay additional funds if something comes up regarding an election issue. Vice Mayor Beard added that any issue that may come up before the Town should be handled by the Town Attorney and does not feel this is necessary. Councilmember Roberts stated that the Town Attorney is an employee and forbidden, like all Town employees, to be involved with the election. Councilmember Roberts added that the Council is the Town Attorney's boss and since there is a slight possibility of influencing him, the Town Attorney may not want to be placed in that position.

Town Attorney Craig stated that he wants to make sure that there is no appearance of impropriety; however, he has no problem with handling election related issues but it's just like the next issue on the agenda, there may be many similar issues brought forth.

Councilmember Walters stated that she is ashamed that this issue is even before the Council and it's very unfortunate but to save the Town any trouble felt this would be in the best interest of everyone. Councilmember Brown asked what type of things can crop up? Councilmember Roberts stated that four years ago when he ran for Council his wife who worked at Town Hall was called into her supervisor's office, Tom Candelaria, and was told she was in violation of the campaign rules because she had a campaign sign in their front yard and she could lose her job because of it. When she asked who advised him to discuss this with her, Mr. Candelaria stated that he could not tell her. When she asked if it was Mr. Nardelli, Mr. Candelaria said no; when she asked if it was Mr. Craig, Mr. Candelaria stated he could not tell her. Councilmember Roberts emotionally concluded that his wife's job was threatened because of a campaign sign in her yard and felt that the Town Attorney should excuse himself from election matters since he is a Town employee. Mayor Gant requested a limit on spending. Following further discussion,

**MOTION»** Moved to consider the law firm of Martinez and Curtis when it comes to election questions that may be controversial and the Town may need help resolving, not to exceed the amount of \$1,000 unless this item comes back to Council

**BY»** Councilmember Walters

**SECOND»** Councilmember Brown

**VOTE»** 4-1-2 (Beard-No)

13. Discussion/Action To Utilize Paper Ballots Instead Of Electronic Ballots In The Upcoming Election



Minutes/Common Council  
February 5, 1996

CERTIFICATION OF COUNCIL MINUTES

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the regular meeting of the Common Council of the Town of Wickenburg, Arizona, held on the 5th day of February, 1996. I further certify that the meeting was duly called and held and that a quorum was present.

Dated this 7th Day of February, 1996

  
Donna Vlvona, Deputy Town Clerk

:dv  
2/7/96

APPROVAL OF THE WICKENBURG TOWN ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION and the TOWN OF WICKENBURG and declare this agreement to be in proper form and within the powers and authority granted to the Town under the laws of the State of Arizona.

DATED this 12 day of February, 1996. <sup>HP</sup>

Harry E. Lang  
Town Attorney



STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

GRANT WOODS  
ATTORNEY GENERAL

1275 WEST WASHINGTON, PHOENIX 85007-2926

MAIN PHONE : 542-5025  
TELECOPIER : 542-4085

INTERGOVERNMENTAL AGREEMENT  
DETERMINATION

A. G. Contract No. KR95-2796-TRN, an agreement between public agencies, has been reviewed pursuant to A.R.S. §11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

DATED this 16th day of February, 1996.

GRANT WOODS  
Attorney General

A handwritten signature in cursive script, reading "James R. Redpath", is written over a horizontal line.

JAMES R. REDPATH  
Assistant Attorney General  
Transportation Section

JRR:lsr  
9042G